

**REMARKS**

Reconsideration and withdrawal of all outstanding grounds of rejection are respectfully requested in light of the above amendments and the remarks that follow.

The Examiner has rejected claims 1, 3, 6, 7, 11, 12, 14 and 16 under 35 U.S.C. 102(b) as anticipated by Hammett '487.

In responding to applicant's prior arguments, the Examiner contends that Hammett '478 discloses a continuous outer wall 10, with an upper edge formed in the lower portion of the peripheral wall at the ledge located at the base of the cut-out portions and columns of the upper portion of the peripheral wall (see Figure 1).

In order to more clearly distinguish the claimed invention over Hammett, applicant has amended both independent claims 1 and 12 to require that the lower portion of the peripheral wall adjacent the crate bottom be formed as solid bands along the side walls. In Hammett, there is no continuous solid band in the lower portion of the peripheral wall that is also adjacent the crate bottom. Moreover, independent claim 12 now requires the crate bottom to be flat and devoid of any interior columns. Hammett discloses plural interior columns extending upward from the crate bottom. In addition, there are no downwardly and inwardly extending buttresses in Hammett. Also, Hammett discloses bottle support platforms raised with respect to the crate bottom, contrary to claim 6. Accordingly, the Section 102 anticipation rejection of claims 1 and 12 as well as claims 3, 6, 7 and 16 which depend therefrom has been overcome and should now be withdrawn. (Claim 14 has been cancelled.)

*support  
platforms  
are flush  
w/ bottom  
surface*

The Examiner has rejected claims 17, 20 and 24 under 35 U.S.C. 102(b) as anticipated by Apps '277.

As to independent claim 17, of particular relevance is the requirement that the lower portion of the peripheral wall and the columns be of single wall construction. According to the Examiner, any double wall construction necessarily incorporates a single wall construction.

This is clearly not the case since the use of the term "single" in describing the wall construction is a limiting term that precludes a "double" wall construction. However, applicant has modified claim 17 to require the lower portion of the peripheral wall and the columns to be of "only" single wall construction as suggested by the Examiner. On this basis, the Section 102 rejection of claim 17 as well as claim 20 which depends therefrom based in Apps '277, has also been overcome.

With respect to independent claim 24, it is pointed out that the claim requires a plurality of laterally spaced wedge elements on outside surfaces of selected ones of the columns that provide a smooth transition from the upper portion to the lower portion of the side wall. This claim has reference to the wedge elements 62 as best seen in Figure 2 of the application.

Applicant is unable to find any such structural feature on the external surfaces of any columns in Apps. Moreover, the Examiner has not indicated what element in the crate construction of Apps '277 provides response for this limitation. It is respectfully

submitted that the Section 102 rejection of claim 17 based on Apps '277 is not supported by Apps, and therefore should also be withdrawn.

The Examiner has rejected claim 2 under 35 U.S.C. 103 as unpatentable over Hammett '487 in view of Apps '461. According to the Examiner, Hammett discloses the invention except for the number of ribs in each group being three. The Examiner points to Figure 3 of Apps '461 and argues that it would have been obvious to add additional ribs to Hammett in order to meet the claimed requirement.

As already noted above, Hammett fails to disclose or suggest a lower peripheral wall portion adjacent the crate bottom that is formed as a solid continuous band along the side walls of the crate. While this particular feature is shown in Apps '461, it is noted that claim 1 also requires that the lower portion of the peripheral wall and the columns be of single wall construction except for the hollow caps at the upper ends of the columns that are of double wall construction. This limitation is clearly exclusionary in that it requires that the lower wall portion be only of single wall construction, i.e., the claim requires the wall to be of single wall construction in contrast to the double wall construction in the caps at the tops of the columns. In Apps '461 the lower wall portion is of double wall construction, noting the inside lower wall portions 56. Moreover, the ribs in Apps are attached to the inner wall of the double wall construction, unlike the claimed arrangement. Thus, the combination of Hammett '487 and Apps '461 neither discloses nor suggests the subject matter of dependent claim 2.

The Examiner has rejected claims 4, 5, 8, 9 and 10 under 35 U.S.C. 103 as unpatentable over Hammett '487 in view of Apps '277. Here again, dependent claims 4, 5, 8, 9 and 10 depend from claim 1 which requires both single wall construction in the lower portion of the side wall as well as a lower wall portion that is formed as a continuous solid band adjacent the crate bottom. Apps '277, like Apps '461, discloses a lower wall portion that is clearly of double wall construction. With specific regard to claim 10, the Examiner merely concludes obviousness with no supporting evidence. Neither Hammett nor Apps '277 discloses or suggests the pair of bottle supporting ribs on hollow caps at the tops of the columns. The Examiner's argument that the addition of ribs would have been obvious in order to prevent weakening of the column tops is not credible since Apps '277 already includes ribs 80 inside the columns that would strengthen the columns. Accordingly, no combination of Hammett '487 in view of Apps '277 is sufficient to render obvious the subject matter contained in dependent claims 4, 5, 8, 9 and 10, all of which depend from claim 1.

Claims 1-12, 14-20, 23 and 24 have been rejected under Section 103 as unpatentable over Apps '277 in view of Hammett '487. According to the Examiner, Apps '277 discloses the invention except for the connection of the handle to the crate bottom. The Examiner contends that Hammett discloses the latter feature and that it would have been obvious to one of ordinary skill in the art to add a connection in the middle of the handle or Apps as taught by Hammett.

Apps '277 does not disclose or suggest lower portions of the peripheral wall of the crate being of single wall construction except for hollow caps at the upper ends of the columns (claim 1), and Hammett '487 does not disclose or suggest a solid band in the lower portion of the side walls adjacent the crate bottom. Thus, regardless of what Hammett teaches with respect to the handle, the combination of references does not otherwise suggest the subject matter of independent claim 1 and dependent claims 2-11 under 35 U.S.C. 103. In addition, neither reference discloses the groups of three ribs required by claim 2; the buttress/rib relationship required by claim 3; or the rib arrangement required by claim 10.

Concerning independent claim 12, the references do not suggest the claimed combination of a solid band in the lower portion adjacent the crate bottom that is also of single wall thickness. In Apps '277, the lower side wall portions are of double wall construction and in Hammett, there are no solid, continuous bands. Accordingly, the combination of references does not suggest the subject matter of claim 12 or claim 16 that depends therefrom under 35 U.S.C. 103.

With respect to independent claim 17, Apps '277 does not disclose or suggest the single wall construction required by the claim, and Hammett '487 does not disclose or suggest the continuous solid bands in the lower portions of the peripheral wall adjacent the crate bottom. Thus, claim 17 and dependent claims 18-20 and 23 are not rendered obvious by the applied prior art. Moreover, the individual limitations in claims 18, 19 and 23 are also not disclosed or suggested by either reference.

Concerning independent claim 24, the references cited by the Examiner nowhere disclose or suggest the laterally spaced wedge elements on outside surfaces of selected ones of the columns that provide a smooth transition from the upper portion to the lower portion of the side wall.

For the above reasons, the rejection of claims 1-12, 15-20, 23 and 24 should also be withdrawn.

The Examiner has rejected claim 22 as unpatentable over Apps '277. As acknowledged by the Examiner, no pair of ribs as claimed are disclosed or suggested in Apps '277. Claim 22 depends from claim 17 and Apps '277 does not suggest the single wall construction required by that claim. In addition, Apps '277 discloses no rib on the hollow cap portions of the columns as required by claim 22.

For the above reasons, all of the remaining claims 1-12, 15-20 and 22-24 are now in condition for immediate allowance, and early passage to issue is requested. Because the amendments place the claims in condition for allowance, entry of the amendment is consistent with 37 CFR 1.16. In the event, however, any small matters remain outstanding, the Examiner is encouraged to telephone the undersigned in order to expedite the prosecution of the application.

**HAMMETT**

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Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

A handwritten signature in black ink, appearing to read "Michael V. Keenan", written over a horizontal line.

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